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PACIFICA CONSTRUCTION and BOBBY SARNEVESHT
7

8   UNITED STATES DISTRICT COURT

9   FOR THE NORTHERN DISTRICT OF CALIFORNIA

10
ADEL PORTILLO and EDIEL LOPEZ,
11   Case No. C08-00190 JW
        Plaintiffs,
12   ANSWER TO COMPLAINT AND
     vs.   DEMAND FOR JURY TRIAL
13
NADER SARNEVESHT, dba PACIFICA
14 CONSTRUCTION, BOBBY
SARNEVESHT and DOES 1 through 10,
15
        Defendants.
16 _____/

17

18   COME NOW defendants NADER SARNEVESHT, doing business as PACIFIC

19 CONSTRUCTION, and BOBBY SARNEVESHT ("Defendants") and in answer to the First

20 Amended Complaint for Damages ("complaint") filed by plaintiffs ADEL PORTILLO and EDIEL

21 LOPEZ ("plaintiffs") hereby responds to each of the allegations contained in the following

22 paragraphs of plaintiffs' Complaint.

23   **Response to Nature of Claim**

24   1.   Defendants admit this action is on behalf of plaintiffs and that they are seeking

25 damages against defendants for the causes of action alleged in their complaint.   Defendants

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1 deny all other allegations in this paragraph of the complaint.

2   2.   Defendants are without sufficient knowledge or information to form a belief as to

3 the truth of the allegations contained in this paragraph, and on that basis deny each and every

4 allegation contained therein.

5   3.   Defendants are without sufficient knowledge or information to form a belief as to

6 the truth of the allegations contained in this paragraph, and on that basis deny each and every

7 allegation contained therein.

8   4.   Defendants admit these allegations.

9   5.   Defendants deny that defendant BOBBY SARNEVESHT is an owner, manager,

10 director, associate or employee of PACIFICA CONSTRUCTION.

11   6.   Defendants deny that plaintiffs were ever employed by PACIFICA

12 CONSTRUCTION. They were independent contractors.

13   7.   Defendants deny that plaintiffs were ever employed by PACIFICA

14 CONSTRUCTION or that they acted "in the normal course and scope of employment duties with

15 Defendants." They were independent contractors.

16   8.   Defendants deny this allegation.

17   9.   Defendants admit this allegation.

18   10.   Defendants admit that plaintiffs were not responsible for management or

19 administrative functions and that they were not required to exercise independent discretion and

20 judgment more than fifty percent of their working time. Defendants deny that plaintiffs work was

21 "non-exempt" since they were independent contractors.

22   11.   Defendants admit this allegation.

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Response to Count One

12.   Defendants deny these allegations to the extent that they incorporate previous

allegations that defendants deny.

13.   California Labor Code Section 501 does not exist. The general rules for

compensating employees for overtime are set forth in California Labor Code Section 510.

Defendants deny that California Labor Code Section 510 applies to plaintiffs' work

for PACIFICA CONSTRUCTION.

14.   Defendants deny all of the allegations in this paragraph.

15.   Defendants admit that employees can recover compensation for overtime in a civil

action under California Labor Code Section 1194.

16.   Defendants deny all of the allegations in this paragraph.

17.   Defendants deny that they owe any money to plaintiffs. Plaintiffs have been paid for

all of their work.

18.   Defendants deny all of the allegations in this paragraph.

19.   Defendants deny all of the allegations in this paragraph.

Response to Count Two

20.   Defendants deny these allegations to the extent that they incorporate previous

allegations that defendants deny.

21.   Defendants deny all of the allegations in this paragraph.

22.   Defendants admit that the FLSA sets forth overtime requirements. Defendants deny

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the allegations in this paragraph to the extent it suggests or implies that the FLSA applies to

plaintiffs' work.

23.   Defendants deny all of the allegations in this paragraph.

24.   Defendants deny all of the allegations in this paragraph.

25.   Defendants deny all of the allegations in this paragraph.

26.   Defendants deny all of the allegations in this paragraph.

27.   Defendants deny all of the allegations in this paragraph.

28.   Defendants deny all of the allegations in this paragraph.

Response to Count Three

29.   Defendants deny these allegations to the extent that they incorporate previous

allegations that defendants deny.

30.   Defendants deny all of the allegations in this paragraph.

31.   Defendants admit that a penalty can be imposed under California Labor Code Section

203 for not paying wages owed to an employee upon their termination. Defendants deny the

allegations in this paragraph to the extent they suggest or imply that defendants are subject to a

penalty under California Labor Code Section 203.

32.   Defendants deny all of the allegations in this paragraph.

33.   Defendants deny all of the allegations in this paragraph.

34.   Defendants deny all of the allegations in this paragraph.

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Response to Count Four

35.   Defendants deny these allegations to the extent that they incorporate previous allegations that defendants deny.

36.   Defendants deny all of the allegations in this paragraph.

37.   Defendants deny all of the allegations in this paragraph.

38.   Defendants deny all of the allegations in this paragraph.

39.   Defendants deny all of the allegations in this paragraph.

40.   Defendants deny all of the allegations in this paragraph.

41.   Defendants deny all of the allegations in this paragraph.

42.   Defendants deny all of the allegations in this paragraph.

Response to Count Five

43.   Defendants deny these allegations to the extent that they incorporate previous allegations that defendants deny.

44.   Defendants admit that California Labor Code Section 226 requires that certain information be contained in wage statements. Defendants deny the allegations in this paragraph to the extent that it suggests or implies that defendants were subject to these requirements.

45.   Defendants deny that plaintiffs have a private right of action for violations of California Labor Code Section 226.

46.   Defendants deny all of the allegations in this paragraph.

47.   Defendants deny all of the allegations in this paragraph.

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48.   Defendants deny all of the allegations in this paragraph.

49.   Defendants deny all of the allegations in this paragraph.

50.   Defendants deny all of the allegations in this paragraph.

Response to Count Six

51.   Defendants deny these allegations to the extent that they incorporate previous

allegations that defendants deny.

52.   Defendants deny all of the allegations in this paragraph.

53.   Defendants deny all of the allegations in this paragraph.

54.   Defendants deny all of the allegations in this paragraph.

AFFIRMATIVE DEFENSES

In further response to plaintiffs' First Amended Complaint, defendants allege the following

affirmative defenses:

1. AS AND FOR A FIRST AFFIRMATIVE DEFENSE to the complaint, defendants allege

that the complaint, and each count contained therein, fails to state facts sufficient to constitute a

cause of action against these defendants.

2. AS AND FOR A SECOND AFFIRMATIVE DEFENSE to the complaint, defendants

allege that plaintiffs are estopped by their own acts and omissions from asserting the claims alleged

therein.

3. AS AND FOR A THIRD AFFIRMATIVE DEFENSE to the complaint, defendants allege

that plaintiffs' claims are barred by their own delay and inaction and by the doctrine of laches.

4. AS AND FOR A FOURTH AFFIRMATIVE DEFENSE to the complaint, defendants allege that plaintiffs have not taken reasonable steps to prevent or otherwise mitigate the alleged damages, if any there be.

5. AS AND FOR A FIFTH AFFIRMATIVE DEFENSE to the complaint, defendants allege that plaintiffs' claims are barred by the doctrine of unclean hands.

6. AS AND FOR A SIXTH AFFIRMATIVE DEFENSE to the complaint, defendants allege that plaintiffs have not been damaged in any sum or sums, whatsoever, by any act or omission performed by, or on behalf of these defendants.

7. AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE to the Complaint, defendants allege that any and all losses sustained by plaintiffs, if any there be, as a result of the occurrences complained of, were caused by the acts or omissions of plaintiffs and/or persons and/or entities other than these defendants.

8. AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE to the complaint, defendants allege that plaintiffs' claims are barred by waiver.

9. AS AND FOR A NINTH AFFIRMATIVE DEFENSE to the complaint, defendants allege that plaintiffs' claims against defendant are uncertain.

10. AS AND FOR A TENTH AFFIRMATIVE DEFENSE to the complaint, defendants allege that Plaintiff's claims are barred in whole or in part because Defendants were privileged and justified in acting as they did.

11. AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE to the complaint, defendants allege that at all times and places alleged in the Complaint, Defendants performed and discharged in good faith each and every obligation they owed, if any, to Plaintiffs.

12.   AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE to the complaint, defendants allege that plaintiffs' claims are barred in whole or in part because any alleged actions or omissions complained of by Defendants were consented to by Plaintiffs.

13.   AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE to the complaint, defendants allege that plaintiffs' claims are barred in whole or in part because any alleged obligations owed by Defendants to Plaintiffs were discharged.

14.   AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE to the complaint, defendants allege that plaintiffs' claims are barred in whole or in part by virtue of the failure of Plaintiffs to perform their obligations to Defendants.

15.   Defendants presently have insufficient knowledge or information upon which to form a belief as to whether any other affirmative defenses are available. Defendants reserve the right to assert additional affirmative defenses in the event discovery indicates they are appropriate.

WHEREFORE, defendants pray for judgment as follows:

1.   That plaintiffs take nothing;

2.   For an award of attorneys' fees and costs of this proceeding; and

3.   For such other and further relief as the court deems proper.

JURY DEMAND

Defendants hereby demand a jury trial.

Dated:_____   _____

JONATHAN JACKEL
Attorney for Defendants

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